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SoCAL IP LAW GROUP LLP 310 N. WESTLAKE BLVD. STE 120 WESTLAKE VILLAGE, CA 91362			VAUGHN JR, WILLIAM C	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/545,639
Filing Date: April 07, 2000
Appellant(s): CUNNINGHAM ET AL.

Joel G. Landau, Reg. No. 54,732
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08 November 2005 appealing from the Office action mailed 10 August 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,119,098	Guyot et al.	09-2000
6,807,558	Hassett et al.	10-2004
2003/0023488	Landsman et al.	01-2003
5,948,061	Merriman et al.	09-1999
6,505,773	Palmer et al.	01-2003
5,854,897	Radziewicz et al.	12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-3, 33-35, 47-49** are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyot et al. (Guyot), U.S. Patent No. 6,119,098 in view of Hassett et al. (Hassett), U.S. Patent No. 6,807,558 in view of Landsman et al. (Landsman), U.S. PG PUB No. 2003/0023488.
3. Regarding **claims 1, 33, and 47**, (e.g., exemplary claim 1), Guyot discloses the invention substantially as claimed. Guyot discloses *a method of providing a user computer with access to*

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files of a network [see Guyot, Col. 1, lines 60-67 and Col. 2, lines 1-5], *the method comprising: establishing a communication link from the user computer to an access control system of the network* (Guyot teaches a client establishing a connection with a server), [see Guyot, Col. 6, lines 44-50]; *launching a viewer program that controls a status of the communication link* [see Guyot, Col. 6, lines 46-50]; *detecting times when the user is not actively sending or receiving data from the network* [see Guyot, Col. 2, lines 15-21 and Col. 5, lines 11-17], *such that the viewer maintains a pool of ad files at the user computer for display and performs ad pool management tasks* (Guyot teaches a client periodically accessing a server over a distributed information network, e.g., Internet, to download targeted advertisements), [see Guyot, Col. 1, lines 65-67, Col. 2, lines 1-12]; *opening a viewer program window in which a next ad file from the ad file pool is displayed* [see Guyot, Col. 5, lines 27-67]; *and managing the ad file pool so as to keep track of the number of times each ad file in the ad file pool has been viewed* (Guyot also teaches management of advertisement as well as having a database of a personal profile regarding a subscriber), [see Guyot, Col. 1, lines 60-64 and Col. 3, lines 23-30, 42-54] *and determine when each ad file in the ad file pool should no longer be viewed* [see Guyot, Col. 4, lines 1-14].

Eventhough, Guyot does imply hiding, dragging and dropping of the application window frame as well as status button [see Guyot, Col. 5, lines 35-44, Col. 6, lines 43-50]. However, Guyot does not explicitly provide the details of detecting times when the user is not actively sending or receiving data from the network and downloading ad files from the network to the user computer during such times as well as hiding the viewer program window after a predetermined number of ad files from the ad file pool having been played and keeping the viewer program window hidden for a predetermined quiet interval. By this rationale **claims 1, 33 and 47** are rejected.

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4. In the same field of endeavor, Hassett discloses (e.g., utilization of information “Push” technology). Hassett discloses *detecting times when the user is not actively sending or receiving data from the network and downloading ad files from the network to the user computer during such times* [see Hassett, Col. 10, lines 16-39].

5. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Hassett teachings of utilization of information push technology with the teachings of Guyot for the purpose of providing for a more efficient manner in which data is delivered to a subscriber.

6. In the same field of endeavor, Landsman discloses (e.g., Technique for implementing interstitial web advertising through use of an ad descriptor). Landsman discloses *periodically opening the viewer program window and hiding the viewer program window after a predetermined number of ad files from the ad file pool having been played and keeping the viewer program window hidden for a predetermined quiet interval* [see Landsman, Figure 20, sections 0110 and 0151].

7. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Landsman’s teachings of Technique for implementing interstitial web advertising through use of an ad descriptor with the teachings of Guyot-Hassett, for the purpose of improving upon interstitial advertising techniques [see Landsman, section 0032]. By this rationale **claims 1, 33 and 47** are rejected.

8. Regarding **claims 2, 34 and 48**, (e.g., exemplary claim 2), Guyot-Hassett and Landsman discloses *wherein managing the ad file pool includes determining that an ad file should not be*

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viewed after the ad file has been viewed a predetermined number of times [see Guyot, Col. 4, lines 42-45]. By this rationale **claims 2, 34 and 48** are rejected.

9. Regarding **claims 3, 35 and 49**, (e.g., exemplary claim 3), Guyot-Hassett and Landsman discloses *wherein managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed for a predetermined number of calendar days* [see Guyot, Col. 4, lines 57-67 and Col. 5, lines 1-5]. By this rationale **claims 3, 35 and 49** are rejected.

Claim Rejections - 35 USC § 103

10. **Claims 4, 12-16-22, 36, 42-46, 50, 56-60** are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyot-Hassett and Landsman as applied to claims 1, 33 and 47 above, and further in view of Merriman et al. (Merriman), U.S. Patent No. 5,948,061.

11. Regarding claims 4, 36 and 50 (e.g., exemplary claim 4), Guyot-Hassett and Landsman discloses the invention substantially as claimed. Eventhough, Guyot-Hassett and Landsman do imply utilizing an expiration data for discarding out of date advertisements [see Guyot, Col. 7, lines 12-25]. However, Guyot does not explicitly discarding an oldest ad file from the ad file pool if the ad file pool size exceeds a predetermined size limit.

12. In the same field of endeavor, Merriman discloses (e.g., method of delivery, targeting, and measuring advertising over networks). Merriman discloses wherein managing the ad file pool includes discarding an oldest ad file from the ad file pool if the ad file pool size exceeds a predetermined size limit value [see Merriman, Col. 6, lines 12-26].

13. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Merriman's teachings of a method of

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delivery, targeting, and measuring advertising over networks with the teachings of Guyot-Hassett and Landsman, for the purpose of ensuring that only relevant advertisements are shown. By this rationale claims 4, 36 and 50 are rejected.

14. Regarding **claims 12, 42 and 56**, Guyot-Hassett, Landsman and Merriman discloses *further including: determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed* [see Merriman, Col. 2, lines 30-35]; *and determining click through data corresponding to network addresses visited by the use during the viewing of an ad file* [see Merriman, Col. 3, lines 64-67 and Col. 4, lines 1-67]; *and reporting the ad impression viewing data to the access control system* [see Merriman, Col. 2, lines 15-45].

The same motivation that was utilized in the combination of claims 4, 36 and 50, applies equally as well to claims 12, 42 and 56. By this rationale **claims 12, 42 and 56** are rejected.

15. Regarding **claims 13, 43 and 57**, Guyot-Hassett, Landsman and Merriman discloses *further including storing state information for the viewing program at the user computer* [see Guyot, Col. 6, lines 47-49]. By this rationale **claims 13, 43 and 57** are rejected.

16. Regarding **claims 14, 44 and 58**, Guyot-Hassett, Landsman and Merriman discloses *wherein the viewer program displays closed captioning information* [The Examiner takes Official Notice [see MPEP 2144.03]]. By this rationale **claims 14, 44 and 58** are rejected.

17. Regarding **claims 15, 45 and 59**, Guyot-Hassett, Landsman and Merriman discloses *wherein the viewer program tracks the number of online network access sessions by the user computer* [see Merriman, Col. 4, lines 38-67 and Col. 5, lines 1-9]. The same motivation to combine that was utilized in claims 4, 36, 50, applies equally as well to claims 15, 45 and 59. By this rationale **claims 15, 45, and 59** are rejected.

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18. Regarding claims **16, 46 and 60** Guyot-Hassett, Landsman and Merriman discloses *wherein the viewer program tracks the time spent online with network access by the user computer* [see Merriman, Col. 4, lines 38-67 and Col. 1-9]. The same motivation utilized to combine claims 4, 36, 50, applies equally as well to claims 16, 46 and 60. By this rationale **claims 16, 46 and 60** are rejected.

19. Regarding **claim 17**, Guyot-Hassett, Landsman and Merriman discloses *wherein establishing a communication link includes: receiving user identification information* [see Merriman, Col. 5, lines 10-63]; *verifying demographic information for the identified user stored at the access control system and providing the communication link* [see Merriman, Col. 10-63]; *collecting demographic information from the user computer in an initial registration and access operation, storing the demographic information at the access control systems and identifying it with the registered user, and providing the communication link* [see Merriman, Col. 5, lines 10-63]; *and otherwise terminating the communication link and denying network access* [well known]. The same motivation that was utilized in the combination of claim 1, applies equally as well to claim 17. By this rationale **claim 17** is rejected.

20. Regarding **claim 18**, Guyot-Hassett, Landsman and Merriman discloses *determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed* [see rejection of claim 12, supra]; *determining click through data corresponding to network addresses visited by the user during the viewing of an ad file* [see rejection of claim 12, supra]; *and reporting the ad impression viewing data to the access control system* [see rejection of claim 12, supra]. By this rationale **claim 18** is rejected.

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21. Regarding **claim 19**, Guyot-Judson and Merriman discloses *further including preparing a Demographic Report that summarizes the reported ad impression viewing data for multiple computer users over a current time period* [see Merriman, Col. 5, lines 50-63]. By this rationale **claim 19** is rejected.

22. Regarding **claim 20**, Guyot-Hassett, Landsman and Merriman discloses *further providing the Demographic Report to a compute user identified as an ad file sponsor* [see Guyot, Col. 3, lines 55-67 and Col. 4, lines 1-15]. By this rationale **claim 20** is rejected.

23. Regarding **claim 21**, Guyot-Hassett, Landsman and Merriman discloses *wherein the Demographic Report includes demographic report fields that are selected by the computer user* [see Guyot, Col. 3, lines 65-67 and Col. 4, lines 1-15]. By this rationale **claim 21** is rejected.

24. Regarding **claim 22**, Guyot-Hassett, Landsman and Merriman discloses *wherein providing the Demographic Report includes providing archival reports for prior time periods* [see rejection of claims 20 and 21, supra]. By this rationale **claim 22** is rejected.

Claim Rejections - 35 USC § 103

25. **Claims 5-10, 37, 51, 52** are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyot-Hassett and Landsman as applied to claims 1, 33, 47 above, and further in view of Palmer et al. (Palmer), U.S. No. 6,505,773.

26. Regarding **claims 5, 37 and 51**(e.g., exemplary claim 5), Guyot-Hassett and Landsman discloses the invention substantially as claimed. However, Guyot-Judson does not explicitly disclose wherein managing the ad file pool includes not tracking an ad file as having been viewed if the viewing of the ad file is prematurely halted before normal completion.

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27. In the same endeavor, Palmer discloses (e.g., electronic advertisement and coupon issuance and redemption system). Palmer discloses *wherein managing the ad file pool includes not tracking an ad file as having been viewed if the viewing of the ad file is prematurely halted before normal completion* [see Palmer, Col. 5, lines 1-29].

28. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Palmer's teachings of electronic advertisement and coupon issuance and redemption system with the teachings of Guyot-Hassett and Landsman for the purpose of making sure the consumer absorbs the entire advertisement [see Palmer, col. 2, lines 1-4]. By this rationale **claims 5, 37 and 51** are rejected.

29. Regarding **claims 6, 38 and 52**, Guyot-Hassett, Landsman and Palmer discloses *wherein the viewer program maintains an ad information table of a local database in the user computer* [see Guyot, item 320]. By this rationale **claims 6, 38 and 52** are rejected.

30. Regarding **claims 7, 39 and 53**, Guyot-Hassett, Landsman and Palmer discloses *further including periodically performing fraud control* [see Palmer, Col. 6, lines 10-20], *wherein the viewer program sends a pulse message to the access control system at predetermined intervals, and the access control system causes the communication link to the network to be severed if it fails to receive an expected pulse message* [see Palmer, Col. 5, lines 11-15]. By this rationale **claims 7 and 39** are rejected.

31. Regarding **claims 8 and 40**, Guyot-Hassett, Landsman and Palmer discloses *wherein the viewer program maintains an ad information table that includes ad file information initially received from the access control system, such that the viewer program compares actual ad file information determined by the user computer with corresponding ad file information in the table*

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[see Palmer, col. 14-44], *and such that the access server causes the communication link to the network to be severed if there is a discrepancy* [see Palmer, Col. 4, lines 14-44]. By this rationale **claims 8 and 40** are rejected.

32. Regarding **claim 9**, Guyot-Hassett, Landsman and Palmer discloses *wherein the fraud control comprises comparing ad information in the local database with actual file information for the corresponding ad file, and indicating fraud if there is a discrepancy* [see Palmer, Col. 4, lines 14-44]. By this rationale claim 9 is rejected.

33. Regarding **claims 10, 40 and 54**, Guyot-Hassett, Landsman and Palmer discloses *wherein the viewer program terminates the network connection if fraud is indicated* [see rejection of claim 7, supra]. By this rationale claims 10, 40 and 54 are rejected.

Claim Rejections - 35 USC § 103

34. **Claims 11, 41 and 55** are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyot-Hassett and Landsman as applied to claims 1, 33 and 47 above, and further in view of Radziewicz et al. (Radziewicz), U.S. Patent No. 5,854,897.

35. Regarding **claims 11, 41 and 55**, (e.g., exemplary claim 11), Guyot-Hassett and Landsman discloses the invention substantially as claimed. Guyot-Hassett and Landsman discloses wherein the access control system includes an Ad server that provides the ad files to a user [see Guyot, Col. 3, lines 23-29]. Eventhough, Guyot-Hassett and Landsman do disclose the database including password information regarding a subscriber. However, Guyot-Hassett and Landsman does not explicitly disclose a Network Access Server that assigns a network address

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for an authorized user, and an Access, Authorization, and Accounting server that determines if authorization should be granted to a user.

36. In the same field of endeavor, Radziewicz discloses (e.g., a network communications marketing system). Radziewicz discloses *a Network Access Server that assigns a network address for an authorized user* [see Radziewicz, Col. 12, lines 23-45 and Col. 23, lines 50-55], *and an access, Authorization, and Accounting server that determines if authorization should be granted* [see Radziewicz, Col. 9, lines 64-67, Col. 10, lines 1-53 and Col. 12, lines 45-61].

37. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Radziewicz's teachings of a network communications marketing system with the teachings of Guyot-Hassett and Landsman, for the purpose of that only authorized users gain access to the system. By this rationale **claims 11, 41 and 55** are rejected.

Response to Argument

38. The Appellant argued in substance that:

Issue 1), Appellant argues on page 4, that the section of Guyot describes a status button that is used to display or hide a status window. Appellant further argues that choosing to show or not to show a status window is not the same or analogous to controlling a status of the communication link.

As to Issue 1, the Examiner respectfully disagrees with Appellant's argument. Guyot teaches that processor (210) manages connections between the server and the subscriber system [see Guyot, Col. 3, lines 52-54]. Furthermore, processor (210) monitors the activity of any input

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devices (it is the position of the Examiner that this would include being able to check the status of the connection between the subscriber and the server), [see Guyot, Col. 5, lines 11-18 and Col. 7, lines 5-26]. Also, it is clear to the Examiner that the controlling of the status of the communication link is merely checking to see if a user or client is actively utilizing the connection. Thus, the processor of Guyot teaching managing and monitoring the connections falls within the scope of controlling the status of a communication link. Furthermore, in addition to Guyot teachings this particular limitation. Radziewicz also monitors traffic on a particular connection path [see Radziewicz, Col. 2, lines 13-65 and Col. 24, lines 35-45]. Thus it is clear that the feature in which applicant argues is definitely taught within this references.

Issue 2), Applicant argues in substance on pages 4 and 5, that Hassett does not download during such times that the “user computer is not actively sending or receiving data from the network.

As to Issue 2, the Examiner respectfully disagrees, for the reasons detailed in the following paragraph, the examiner’s rejection is proper given that the cited passages of Guyot-Hassett teaches the argued limitation of applicant’s claimed invention.

It is the position of the Examiner that Guyot-Hassett clearly teaches a user not actively sending or receiving data from the network [see Hassett, Col. 10, lines 16-23]. Whereas Hassett teachings that images (advertisements) are downloaded during user times of inactivity. In addition to Hassett teaching this particular limitation, Landsman also teaches during a interstitial interval the browser issues a request to fetch the next successive web page to which the user desires to transition [see Landsman, Col. 12, section 0110 and section 0151].

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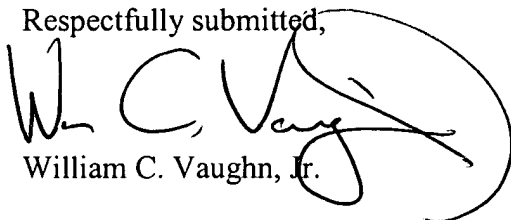
Thus, the Examiner's rejections of the claims are maintained.

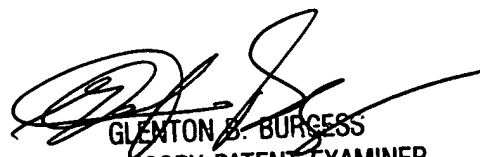
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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